



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शनिवार, 30 मार्च, 2024 / 10 चैत्र, 1946

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated, the 29th February, 2024

No. LEP-A006/07/2021-LEP.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication

of awards of the following cases announced by the Presiding Judge, Labour Court, Dharamshala on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* "e-Gazette" :—

Sl. No.	Case No.	Petitioner	Respondent	Date of Award/Order
1.	Ref. 172/16	Smt. Rijhu	E.E. HPPWD, Pangi at Killar	12.10.2023
2.	Ref. 117/16	Smt. Kareshna	E.E. I&PH, Pangi at Killar	12.10.2023
3.	Ref. 69/18	Smt. Leela Devi	D.F.O. Karsog, Mandi	19.10.2023
4.	Ref. 49/19	Smt. Krishna Devi	Addl. Suptd. E.E.HPSEBL, Joginder Nagar	31.10.2023

By order,

Dr. ABHISHEK JAIN (IAS),
Secretary (Lab. & Emp.).

**IN THE COURT OF Sh. NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT CHAMBA)**

Ref. No. : 172/2016

Date of Institution : 17.3.2016

Date of Decision : 12.10.2023

Smt. Rijhu d/o Shri Bhagwan Chand, r/o Village Gosti, P.O. Kariyas, Tehsil Pangi, District Chamba, H.P. Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division, Tehsil Pangi, District Chamba, H.P. Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. O.P. Bhardwaj, Ld. Adv.
For the respondent : Sh. Sharik Ali Shah, Ld. ADA

AWARD

The appropriate Government has made the following reference under section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D.Act') to this court for adjudication:—

“Whether alleged termination of services of Smt. Rijhu d/o Sh. Bhagwan Chand, r/o Village Gosti, P/O Kariyas, Tehsil Pangi, District Chamba, H.P. from 1999, by the Executive Engineer, H.P.P.W.D. Division, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 165 days, 158 days, 135 days, 206 days, 190 days and 22 days, during the year 1994, 1995, 1996, 1997, 1998 and 1999 and had raised her industrial dispute vide demand notice dated 15-7-2012, after delay of more than 12 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated the case of the petitioner is that she was engaged as beldar by the respondent in year 1989 and she worked with the respondent with intermittent breaks till 1999. The respondent has given break in her service from time to time so that she could not complete service of 160 days in each calendar year for the purpose of regularization of her services whereas the workmen junior to her were retained continuously on muster roll basis. The respondent department utilized her service in HPPWD as well as I&PH department. The State Government has framed the policy for regularization of the daily wage workers which requires a workman to work for minimum 160 days in each calendar year in tribal area. The respondent has given fictional breaks in her services and terminated her services without giving any notice and as such the breaks are to be counted as continuous service for the purpose of calculating 160 days as per the provisions of Section 25-B of the I.D. Act. Her services were orally terminated by the respondent without giving one month's notice in writing indicating the reason for retrenchment and without payment of compensation and thus violated the provisions of Section 25-F of the I.D. Act. She belongs to very remote corner of District Chamba and the State has not appointed any Labour Office or any other agency which could adjudicate the cases of the workman under I.D. Act. She tried her level best to take up the matter with the respondent department time and again verbally and some time through labour unions but the respondent refused to admit her claim whereas sufficient work was available with the respondent department. The persons junior to her were retained in service continuously without any breaks while terminating her service and therefore the principle of 'last come first go' has been violated by the respondent. The workmen whose services were illegally terminated by the respondent with her, have been re-engaged by the respondent and she was not given an opportunity of re-employment; rather preference was given to other persons and also the workmen junior to her. The respondent department has retained continuously and engaged S/Sh./Smt. Gurdev, Man Dei, Sher Singh, Balwant Singh, Dila Ram, Ram Dei, Dev Raj, Bameshwar Dutt and Raj Kumar, who are still working in the department continuously and thus violated the provisions of Sections 25-G and 25-H of the I.D. Act. Had her services were not terminated illegally and fictional breaks were not given in her service, she would have completed 10 years continuous service in the year 1999 and would have been entitled for regularization w.e.f. 1.1.2000. She is not gainfully employed anywhere from the date of her illegal termination in the year 1999. Hence this petition.

4. The petition has been resisted by the respondent by filing of reply taking preliminary objections qua maintainability, suppression of true and material facts and delay and laches. On merits, the factum of engagement of the petitioner as beldar has not been denied, however, it has been averred that petitioner was engaged as daily wage beldar in the year 1994 and she worked intermittently with the department till 1999 and she left the job at her own will. It has been denied that the petitioner worked for more than 160 days in each calendar year. It has also been denied that

the fictional breaks were given in service of the petitioner and the workmen junior to the petitioner were retained by the department. It has been averred that the petitioner has not completed 160 days in each calendar year as required for tribal area of Tehsil Pangi which is clear from the mandays chart. It has been admitted that State Government has framed policy for regularization of daily wage worker which requires a workman to work for 160 days in each calendar year, however, the rest of the allegations have been denied. It has been denied that the petitioner had approached the department time and again. It has been averred that the petitioner left the work in the year 1999 at her own sweet will and no junior to her were retained in service nor the principle of 'last come first go, was violated. Since the petitioner has not completed 160 days in each calendar year continuously for eight years, her absence period cannot be counted for continuous service. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been reaffirmed after refuting those of the reply contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 29.11.2022:—

1. Whether the termination of the services of the petitioner in the year 1999 is/was illegal and unjustified as alleged? *OPP*

2. Whether the claim petition is not maintainable, as alleged? · · · OPR.

3. Whether the petitioner has not come to the court with clean hands and suppressed the material facts from the court as alleged? *OPR.*

4. Whether the claim petition is bad on account of delay and laches as alleged? OPR.

Relief.

7. The petitioner was called upon to lead evidence. The petitioner appeared as PW1 and closed the evidence.

8. On the other hand the respondent has examined Engineer Joginder Kumar as RW1 and closed the evidence

9. I have heard the Learned Counsel for the petitioner as well as learned Dy. D.A. for the respondent and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, the findings on the above issues are as under:—

Issue No. 1	:	Yes
Issue No. 2	:	No
Issue No. 3	:	No
Issue No. 4	:	Yes
Relief	:	Petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 & 4

11. Both these issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. It has not been disputed by the respondent that the petitioner was engaged as beldar by the respondent department.

13. The petitioner has claimed that she was engaged as beldar on daily wage basis by the respondent in the year 1989 and she intermittently worked with the respondent till 1999 and fictional breaks were given in her service by the respondent so that she could not complete 160 days in each calendar year for the purpose of regularization of her services and terminated her services without serving any notice upon her and without payment of retrenchment compensation to her.

14. On the other hand, the respondent has claimed that petitioner was engaged as daily wage beldar in the year 1994 and she worked intermittently with the department till 1999 and her services were not terminated by the department but she had left the work at her own and no fictional breaks were given in her service.

15. As per mandays chart Ext. RW1/B placed on record by the respondent, the petitioner worked with the respondent from June 1994 till June 1999. The petitioner worked for 165 days in the year 1994, 158½ days in the year 1995, 135 days in the year 1996, 206 days in the year 1997, 190 days in the year 1998 and 22 days in the year 1999. If the total working days during the period of 12 months preceding the date of her termination in June 1999 are counted, it comes to 161 days. Hence, it is evident from the mandays chart Ext. RW1/B that the petitioner has worked for 161 during the period of 12 months preceding the date of her termination.

16. The petitioner Rijhu appeared as PW1 and has filed affidavit Ext. PW1/A in her examination-in-chief wherein he has stated that she worked with the respondent from the year 1989 to 1999 with intermittent breaks given in service by the respondent, however, she has not produced any cogent evidence on record to prove the fact that she had worked from 1989 to 1999.

17. On the other hand, Engineer Joginder Kumar (RW1), in his examination-in-chief, has filed affidavit Ext. RW1/A wherein he reiterated the case of the respondent and in his cross-examination he has denied that the petitioner worked with the respondent since 1989 to 1999. He, however, has admitted that no notice was served upon the petitioner.

18. Thus, in the absence of any cogent evidence having been led by the petitioner to prove that she had worked with respondent from 1989 to 1999, the period shown in the mandays chart RW1/B has to be accepted to be correct.

19. It has not been disputed by the respondent that a workman serving in tribal area of Pangi shall be deemed to be in continuous service within the meaning of Section 25-B of the I.D. Act if he has actually worked for 160 days instead of 240 days in a calendar year during the period of 12 calendar months preceding the date of retrenchment with reference to which the calculation is to be made. Since the petitioner, as per mandays chart Ext. RW1/B filed by the respondent himself, has worked for 161 days with the respondent during the period of 12 calendar months preceding the date when her services were terminated, she can safely be held to be in continuous service as per the provisions of Section 25-B of the I.D. Act and therefore, the services of the petitioner could have been terminated only after complying with the provisions of Section 25-F of the I.D. Act.

20. The respondent has come up with the plea that the petitioner herself has left the work, however, it is fairly settled that the plea of abandonment of work is to be proved by the employer. Hon'ble High Court in **CWP No. 3634 of 2009** titled as **Narain Singh vs. The State of Himachal Pradesh & Ors.** decided on 21.6.2016, has held that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Hon'ble High Court in **State of H.P. and Anr. vs. Partap Singh, 2016(6)ILR (HP) 1314** has held that it is settled that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer and even if, it is presumed that the workman had abandoned the job himself and the same is a gross misconduct, in that case some disciplinary inquiry should have been initiated against the workman and the employer has to prove the same by leading evidence.

21. In the case in hand, the respondent has not led any cogent evidence on record to prove the abandonment of work of by the petitioner and therefore plea of the respondent that the petitioner herself has left the work cannot be accepted. Consequently, it can safely be held that the respondent terminated the services of the petitioner in June 1999.

22. The respondent admittedly has not issued any notice to the petitioner before terminating her services in June 1999 nor wages for the period of notice were paid to her in lieu of such notice nor any compensation was paid to her and thus it is established on record that the respondent has illegally terminated the services of the petitioner in contravention of the provisions of Section 25-F of the I.D. Act.

23. The petitioner has also alleged the violation of Sections 25-G and 25-H of the I.D. Act. The petitioner Rijhu (PW1) has stated that the respondent retained workmen junior to her while terminating her services and has violated the principle of 'last come first go'. She has further stated that the workmen junior to her, whose services were terminated by the respondent department with her, have been re-engaged by the respondent and they have also engaged other persons. On the other hand Er. Joginder Kumar RW1 has stated that workmen junior to the petitioner were not retained by the department nor any person was engaged by them and there is no violation of the provisions of Sections 25-G and 25-H of the I.D. Act.

24. The petitioner has filed the copy of mandays chart of four workmen namely Chhin Dei, Bhag Dei, Sur Dei and Shyami Ext. PW1/B and copy of recommendations of the screening committee for regularization of daily wages worker Ext. PW1/C on record. The perusal of the mandays chart Ext.PW1/B would show that Chhin Dei was engaged in the year 1999 and remaining workmen were engaged as beldars in the year 2000 and they were continuously retained till the year 2009 for which period mandays chart has been issued. Perusal of recommendation for regularization Ext.PW1/C would show Dev Raj and Gautam were engaged in the year 2007 and they were recommended for regularization after completion of seven years of service on 31.3.2015. The services of the petitioner were terminated in June, 1999 and the workers/beldars mentioned in mandays chart Ext. PW1/B as well as recommendations of regularization Ext.PW1/C were engaged after the termination of the services of the petitioner. Admittedly no offer for re-employment was given to the petitioner and therefore it is also established on record that the respondent has violated the provisions of Section 25-H of the I.D. Act.

25. The petitioner, however, has not led any cogent evidence on record to prove that any workmen junior to her were retained by the respondent while terminating her services and thus violation of Section 25-G of the I.D. Act is not proved.

26. The petitioner thus has proved on record that the respondent has illegally terminated her services in contravention of the provisions of Section 25-F of the I.D. Act and no offer for re-employment was given to her by the respondent while engaging fresh hands as per the

provisions of 25-H of the I.D. Act. However, the petitioner admittedly issued demand notice and raised industrial dispute after more than 12 years of termination of her services by the respondent. Her services were terminated in June 1999 and she has raised the industrial dispute on 15.7.2012 and thus there is considerable delay in raising industrial dispute and the claim of the petitioner is bad on account of delay and laches. It is fairly settled that workman cannot be permitted to sleep over his right for years together and cannot claim reinstatement as a matter of right and the court in such cases can mould the relief and grant compensation instead of reinstatement.

27. Hon'ble High Court in **ROOP SINGH V/S EXECUTIVE ENGINEER, HPPWD 2019 (2) Shimla LC 645**, paras no. 7 to 11 are held as under:—

[7] After a close scrutiny of the material available on record *vis-a-vis* reasoning assigned by learned Tribunal, while awarding compensation to the workman in lieu of back wages, seniority and past service benefits, this Court is not inclined to accept the contention raised by Mr. Rahul Mahajan, learned counsel for the workman that since the workman had successfully proved on record that his services were illegally terminated in violation of Section 25-F of the Act, learned Tribunal could not deny reinstatement on account of delay in raising the demand notice, especially in view of judgment dated 31.8.2015, rendered by the Writ Court in CWP No. 3587 of 2015. Though, a careful perusal of aforesaid judgment reveals that this Court had directed the Labour Commissioner to make a reference to the Tribunal despite there being considerable delay of 12 1/2 years, but while doing so, this Court definitely did not preclude/bar the respondent from raising the question with regard to delay in the proceedings to be held before the Tribunal. In the aforesaid Writ Petition, the workman had laid challenge to the action of the Labour Commissioner in not making reference and this Court having taken note of the explanation rendered on record by the workman, had only directed the Labour Commissioner to make reference to the Labour Court.

[8] A careful perusal of the specific reference made under Section 10(1) of the Act, which has been taken note herein above, itself reveals that the question with regard to delay and laches was required to be decided by the Tribunal while considering the claim of the workman. It is not in dispute that at no point in time, dispute, if any, was ever raised by the workman qua specific reference made to the Labour Court by the Appropriate Government, rather, the workman by way of filing claim, made an attempt to justify the delay caused in making the reference, as such, there appears to be no force in the argument of Mr. Rahul Mahajan, learned counsel for the workman that the learned Tribunal could not have gone into the question of delay and laches, while ascertaining the claim of the workman. The Apex Court, in Prabhakar v. Sericulture Deptt., 2015 15 SCC 1, while specifically dealing with the question of delay in raising the dispute by the workman under the Act *ibid*, has held that since there is no period of limitation prescribed under the Industrial Disputes Act, for raising dispute but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists. In the aforesaid background, Apex Court has held that notwithstanding the fact that the law of limitation does not apply, it is to be shown by the workman that there is a dispute in *praesenti* and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist. Apex Court has further held that if because of such a delay, dispute no longer remains alive and is to be treated as 'dead', then it would be non-existent dispute, which cannot be referred. In the aforesaid judgment, Apex Court concluded that the words, "at any time", used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to the proceedings under the Act *ibid*. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed unless there is a satisfactory

explanation for the delay. By way of aforesaid judgment, Apex Court ordered that if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement. Reliance in this regard is also placed upon following judgments rendered by Apex Court, viz.; Rajasthan State Agriculture Mktg. Board v. Mohan Lal, 2013 14 SCC 543; U.P. SRTC v. Ram Singh, 2008 17 SCC 627; Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd., 2007 9 SCC 109; Asstt. Engineer, CAD v. Dhan Kunwar, 2006 5 SCC 481 and Mahavir v. Union of India, 2018 3 SCC 588. Similar view has been taken by this Court in Girja Nand v. State of Himachal Pradesh & Others, CWP No. 93 of 2019 decided on 13.3.2019; Smt. Sumfali Devi v. State of Himachal Pradesh and another, CWP No. 2861 of 2018 decided on 2.4.2019 and; The Additional Chief Secretary (PW) & Others v. Shri Ram Gopal, LPA No. 27 of 2019 decided on 3.4.2019. The long and short of the matter is very well expressed by the maxim, *vigilantibus non dormientibus jura subveniunt*, that is to say, the law assists those that are vigilant with their rights, and not those that sleep thereupon.

[9] Though, in the case at hand, impugned Award itself reveals that the respondent failed to prove abandonment of job by the workman but the Man days chart, Exhibit RW1/B clearly reveals that the workman had worked for 18 days in the month of December, 1998, 31 days in the Month of January 1999, 23 days in February, 1999, 27 days in March, 1999, 24 days in April, 1999, 31 days in May, 1999, 24 days in June, 1999, 28 days in July, 1999 and 13 days in August, 1999. Thus, the workman had actually worked for 219 days till the date of his alleged termination. Similarly, the evidence available on record reveals that after the termination of the workman, fresh hands were engaged by the respondent despite the petitioner being available for the job, but, as has been taken note herein above, workman issued demand notice after around 121/2 years of the alleged retrenchment, by which time, much water had flown under the bridge, as such, learned Tribunal, while keeping in view all relevant factors including the mode and manner of appointment, nature of appointment, length of service, grounds on which termination is set aside and delay in raising the dispute, proceeded to award compensation in lieu of back wages, seniority and past service benefits. Thus, this court sees no reason to interfere with the aforesaid findings, which otherwise appear to be reasonable and justified in the facts and circumstances of the case.

[10] Learned counsel for the workman relies upon a judgment passed by a Coordinate Bench of this Court in Sh. Daulat Ram v. The Executive Engineer, HPPWD, CWP No. 1887 of 2017 and other connected matters, decided on 11th December, 2017, whereby it has been held that the reinstatement cannot be denied merely on the ground of delay. With utmost respect, we find that may be the binding judgments of Supreme Court have not been considered in the above mentioned cases by the Coordinate Bench of this Court. That apart, the judgment is not based upon ratio decidendi of the binding judgments of Supreme Court and is primarily based upon the discretion exercised by the Court. We are thus unable to follow the same, rather, being bound by the dictum of the Supreme Court in the cases referred to supra, we do not find any reason to interfere with the Award passed by learned Tribunal.

[11] The question with regard to competence of the Labour Court to award compensation in such like cases is no more res integra. The Apex Court in Workmen Rastriya Colliery Mazdoor Sangh v. Bharat Coking Coal Ltd., 2016 9 SCC 431 and Rashtriya Colliery Mazdoor Sangh v. Employers, 2017 1 SCC 264, has dealt with the issue at hand and has proceeded to award compensation to the tune of Rs. 4.00 Lakh to each of the workmen in the latter case, as such, argument advanced by Mr. Adarsh Sharma, learned Additional

Advocate General that no compensation could have been awarded on account of delay in raising the dispute, deserves outright rejection.

28. In the case in hand, as has been observed above, the petitioner has raised the industrial dispute after a period of more than 12 years and she has not led any cogent evidence on record to show that she has taken up the matter with the respondent as stated by her and therefore under the facts and circumstances of the case, the petitioner, in view of law laid down by Hon'ble High Court abovesaid the case, is not entitled to reinstatement but compensation.

29. Hence taking into consideration the number of working days for which the petitioner worked with the department from June 1994 till June 1999 and the facts that the respondent has violated the provisions of Sections 25-F and 25-H of the I.D. Act, I am of considered view that it would be in the interest of justice if a sum of Rs.2,00,000/- is awarded as compensation in lieu of reinstatement and other service benefits to the petitioner. Hence issue No.1 is partly decided in favour of the petitioner and issue No. 4 is decided in favour of the respondent and are answered as such.

Issue No. 2

30. In view of returned findings of issue no. 1, the petition is maintainable. Hence this issue is decided against the respondent and is answered in negative.

Issue No.3

31. Neither any evidence has been led nor any arguments were addressed as to how the petitioner has not come to the court with clean hands and as to what material facts have been suppressed by the petitioner from the court. Hence the respondent has failed to prove that the petitioner has not come to the court with clean hands and has suppressed the material facts from the court and as such this issue is decided against the respondent and is answered in negative.

Relief

32. In view of my returned findings on abovesaid issues, the claim petition is partly allowed and a sum of Rs. 2 lakh (Rupees Two lakh only) is awarded as compensation to the petitioner for illegal termination her services by the respondent. The respondent shall pay the said compensation within period of two months, failing which the respondent shall pay interest @ 12% per annum on compensation amount from the date of the award till realization of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

33. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after its due completion be consigned to the Record Room.

Announced in the open Court today, this 12th day of October, 2023

Sd/-
 (NARESH KUMAR),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.,
(Camp at Chamba).

**IN THE COURT OF Sh. NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 117/2016

Date of Institution : 04.3.2016

Date of Decision : 12.10.2023

Miss Kareshna d/o Shri Sham Lal, r/o Village Garhmas, P.O. Sural, Tehsil Pangi, District Chamba, H.P. *Petitioner.*

Versus

The Executive Engineer, IPH Division, Pangi at Killar, Tehsil Pangi, District Chamba, H.P. *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. O.P. Bhardwaj, Ld. Adv.

For the respondent : Sh. Sharik Ali Shah, Ld. ADA

AWARD

The appropriate Government has made the following reference under section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D. Act') to this court for adjudication:—

"Whether alleged termination of services of Miss Kareshna d/o Sh. Sham Lal, Village Garhmas, P.O. Sural, Tehsil Pangi, Distt. Chamba, H.P. during November 1995 by the Executive Engineer, IPH Division, Pangi at Killar, Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 123 days, 62 days, 112 days, 121 days, 142 days during the year 1991, 1992, 1993, 1994 and 1995 respectively and had raised her industrial dispute vide demand notice dated 20-12-2011 after delay of more than 16 years, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period 123 days, 62 days, 112 days, 121 days, 142 days, during the year 1991, 1992, 1993, 1994 and 1995 respectively of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that she was engaged as beldar by the respondent in year 1988 and she worked with the respondent with intermittent breaks till 1995. The respondent has given break in her service from time to time so that she could not complete service of 160 days in each calendar year for the purpose of regularization of her services whereas the workmen junior to her were retained continuously on muster roll basis. The respondent department utilized her service in HPPWD as well as I&PH department. The State Government has framed the policy for regularization of the daily wage workers which requires a workman to work for

minimum 160 days in each calendar year in tribal area. The respondent has given fictional breaks in her services and terminated her services without giving any notice and as such the breaks are to be counted as continuous service for the purpose of calculating 160 days as per the provisions of Section 25-B of the I.D. Act. Her services were orally terminated by the respondent without giving one month's notice in writing indicating the reason for retrenchment and without payment of compensation and thus violated the provisions of Section 25-F of the I.D. Act. She belongs to very remote corner of District Chamba and the State has not appointed any Labour Office or any other agency which could adjudicate the cases of the workman under I.D. Act. She tried her level best to take up the matter with the respondent department time and again verbally and some time through labour unions but the respondent refused to admit her claim whereas sufficient work was available with the respondent department. The persons junior to her were retained in service continuously without any breaks while terminating her service and therefore the principle of 'last come first go' has been violated by the respondent. The workmen whose services were illegally terminated by the respondent with her, have been re-engaged by the respondent and she was not given an opportunity of re-employment; rather preference was given to other persons and also the workmen junior to her. The respondent department has retained continuously and engaged S/Sh./Smt. Gurdev, Man Dei, Sher Singh, Balwant Singh, Dila Ram, Ram Dei, Dev Raj, Bameshwar Dutt and Raj Kumar, who are still working in the department continuously and thus violated the provisions of Sections 25-G and 25-H of the I.D. Act. Had her services were not terminated illegally and fictional breaks were not given in her service, she would have completed 10 years continuous service in the year 1999 and would have been entitled for regularization w.e.f. 1.1.2000. She is not gainfully employed anywhere from the date of her illegal termination. Hence this petition.

4. The petition has been resisted by the respondent by filing of reply taking preliminary objections qua maintainability, suppression of true and material facts and delay and laches. On merits, the factum of engagement of the petitioner as beldar has not been denied, however, it has been averred that petitioner was engaged as daily wage beldar in the year 1991 and she worked intermittently with the department till 1995 and she left the job at her own will. It has been denied that the petitioner worked for more than 160 days in each calendar year. It has also been denied that the fictional breaks were given in service of the petitioner and the workmen junior to the petitioner were retained by the department. It has been averred that the petitioner has not completed 160 days in each calendar year as required for tribal area of Tehsil Pangi which is clear from the mandays chart. It has been admitted that State Government has framed policy for regularization of daily wage worker which requires a workman to work for 160 days in each calendar year, however, the rest of the allegations have been denied. It has been denied that the petitioner had approached the department time and again. It has been averred that the petitioner left the work in the year 1995 at her own sweet will and no junior to her were retained in service nor the principle of 'last come first go' was violated. Since the petitioner has not completed 160 days in each calendar year continuously for eight years her absence period cannot be counted for continuous service. After denying other allegations, it has been prayed that the petition be dismissed.

5. In rejoinder filed by the petitioner, the averments made in the petition have been reaffirmed after refuting those of the reply contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 29.11.2022:—

1. Whether the termination of the services of the petitioner during year 1995 is/was illegal and unjustified as alleged? OPP.
2. Whether the claim petition is not maintainable, as alleged? OPR.
3. Whether the petitioner has not come to the court with clean hands and suppressed the material facts from the court as alleged? OPR.

4. Whether the claim petition is bad on account of delay and laches as alleged? *OPR.*

Relief.

7. The petitioner was called upon to lead evidence. The petitioner appeared as PW1 and closed the evidence.

8. On the other hand the respondent has examined Engineer Joginder Kumar as RW1 and closed the evidence.

9. I have heard the Learned Counsel for the petitioner as well as learned Dy. D.A. for the respondent and gone through the case file carefully.

10. For the reasons to be recorded hereinafter, the findings on the above issues are as under:—

Issue No.1	:	Yes
Issue No. 2	:	No
Issue No. 3	:	No
Issue No. 4	:	Yes
Relief	:	Petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 & 4

11. Both these issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

12. It has not been disputed by the respondent that the petitioner was engaged as beldar by the respondent department.

13. The petitioner has claimed that she was engaged as beldar on daily wage basis by the respondent in the year 1988 and she intermittently worked with the respondent till 1995 and fictional breaks were given in her service by the respondent so that she could not complete 160 days in each calendar year for the purpose of regularization of her services and terminated her services without serving any notice upon her and without payment of retrenchment compensation to her.

14. On the other hand, the respondent has claimed that petitioner was engaged as daily wage beldar in the year 1991 and she worked intermittently with the department till 1995 and her services were not terminated by the department but she had left the work at her own and no fictional breaks were given in her service.

15. As per mandays chart Ext. RW1/B placed on record by the respondent, the petitioner worked with the respondent from July, 1991 to November, 1995. The petitioner worked for 123 days in the year 1991, 62 days in the year 1992, 112 days in the year 1993, 121 days in the year 1994 and 142 days in the year 1995. It is evident from the perusal of mandays chart Ext. RW1/B

that the petitioner has not worked for 160 days during the period of 12 months preceding the date of termination of her services. The petitioner worked for 142 days from the month of July to November in the year 1995 and she had not worked for even a single day in the month of December 1994 and thus she has worked only for 142 days during period of 12 calendar months preceding the date of termination of her services in the month of November, 1995 by the respondent.

16. The petitioner Kareshna appeared as PW1 and has filed affidavit Ext. PW1/A in her examination wherein he has stated that she worked with the respondent from the year 1988 to 1995 with intermittent breaks given in her service by the respondent, however, she has not produced any cogent evidence on record to prove the fact that she had worked from 1988 to 1995.

17. On the other hand, Engineer Joginder Kumar (RW1), in his examination-in-chief, has filed affidavit Ext. RW1/A wherein he reiterated the case of the respondent and in his cross-examination he has denied that the petitioner worked with the respondent since 1988 to 1995. He, however, has admitted that no notice was served upon the petitioner.

18. Thus, in the absence of any cogent evidence having been led by the petitioner to prove that she had worked with respondent from 1988 to 1995, the period shown in the mandays chart RW1/B has to be accepted to be correct.

19. It has not been disputed by the respondent that a workman serving in tribal area of Pangi shall be deemed to be in continuous service within the meaning of Section 25-B of the I.D. Act if he has actually worked for 160 days instead of 240 days in a calendar year during the period of 12 calendar months preceding the date of retrenchment with reference to which the calculation is to be made. Since the petitioner, as per mandays chart Ext. RW1/B filed by the respondent, has not worked for 160 days with the respondent during the period of 12 calendar months preceding the date when her services were terminated, she can not be held to be in continuous service as per the provisions of Section 25-B of the I.D. Act.

20. The respondent has come up with the plea that the petitioner herself has left the work, however, it is fairly settled that the plea of abandonment of work is to be proved by the employer. Hon'ble High Court in **CWP No. 3634 of 2009** titled as **Narain Singh vs. The State of Himachal Pradesh & Ors.** decided on 21.6.2016, has held that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Hon'ble High Court in **State of H.P. and Anr. vs. Partap Singh, 2016(6)ILR (HP) 1314** has held that it is settled that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer and even if, it is presumed that the workman had abandoned the job himself and the same is a gross misconduct, in that case some disciplinary inquiry should have been initiated against the workman and the employer has to prove the same by leading evidence.

21. In the case in hand, the respondent has not led any cogent evidence on record to prove the abandonment of work of by the petitioner and therefore plea of the respondent that the petitioner herself has left the work cannot be accepted. Consequently, it can safely be held that the respondent terminated the services of the petitioner in November 1995. However, as has been observed above, the petitioner has not worked for 160 days with the respondent during the period of 12 calendar months preceding the date when her services were terminated, she was not in continuous service as per the provisions of Section 25-B of the I.D. Act, therefore, the violation of Section 25-F I.D. Act is not proved. Hence, it can safely be held that the petitioner failed to prove that the respondent terminated her services in violation of Section 25-F I.D. Act.

22. The petitioner has also alleged the violation of Sections 25-G and 25-H of the I.D. Act. The petitioner Kareshna (PW1) has stated that the respondent retained workmen junior to her

while terminating her services and has violated the principle of 'last come first go'. She has further stated that the workmen junior to her, whose services were terminated by the respondent department with her, have been re-engaged by the respondent and they have also engaged other persons. On the other hand Er. Joginder Kumar RW1 has stated that workmen junior to the petitioner were not retained by the department nor any person was engaged by them and there is no violation of the provisions of Sections 25-G and 25-H of the I.D. Act.

23. The petitioner has filed the copy of mandays chart of four workmen namely Chhin Dei, Bhag Dei, Sur Dei and Shyami list Ext. PW1/B and copy of recommendations of the screening committee for regularization of daily wages worker Ext. PW1/C on record. The perusal of the mandays chart Ext. PW1/B would show that Chhin Dei was engaged in the year 1999 and remaining workmen were engaged as beldars in the year 2000 and they were continuously retained till the year 2009 for which period mandays chart has been issued. Perusal of recommendation for regularization Ext. PW1/C would show Dev Raj and Gautam were engaged in the year 2007 and they were recommended for regularization after completion of seven years of service on 31.3.2015. The services of the petitioner were terminated in November, 1995 and the workers/beldars mentioned in mandays chart Ext. PW1/B as well as recommendations of regularization Ext. PW1/C were engaged after the termination of the services of the petitioner. Admittedly no offer for re-employment was given to the petitioner and therefore it is established on record that the respondent has violated the provisions of Section 25-H of the I.D. Act.

24. The petitioner, however, has not led any cogent evidence on record to prove that any workmen junior to her were retained by the respondent while terminating her services and thus violation of Section 25-G of the I.D. Act is not proved.

25. The petitioner thus has proved on record that no offer for re-employment was given to her by the respondent while engaging fresh hands as per the provisions of 25-H of the I.D. Act. However, the petitioner admittedly issued demand notice and raised industrial dispute after more than 16 years of termination of her services by the respondent. Her services were terminated in November 1995 and she has raised the industrial dispute on 20.12.2011 and thus there is considerable delay in raising industrial dispute and the claim of the petitioner is bad on account of delay and laches. It is fairly settled that workman cannot be permitted to sleep over his right for years together and cannot claim reinstatement as a matter of right and the court in such cases can mould the relief and grant compensation instead of reinstatement.

26. Hon'ble High Court in **ROOP SINGH V/S EXECUTIVE ENGINEER, HPPWD 2019 (2) Shimla LC 645**, paras no. 7 to 11 are held as under:—

[7] After a close scrutiny of the material available on record *vis-a-vis* reasoning assigned by learned Tribunal, while awarding compensation to the workman in lieu of back wages, seniority and past service benefits, this Court is not inclined to accept the contention raised by Mr. Rahul Mahajan, learned counsel for the workman that since the workman had successfully proved on record that his services were illegally terminated in violation of Section 25-F of the Act, learned Tribunal could not deny reinstatement on account of delay in raising the demand notice, especially in view of judgment dated 31.8.2015, rendered by the Writ Court in CWP No. 3587 of 2015. Though, a careful perusal of aforesaid judgment reveals that this Court had directed the Labour Commissioner to make a reference to the Tribunal despite there being considerable delay of 121/2 years, but while doing so, this Court definitely did not preclude/bar the respondent from raising the question with regard to delay in the proceedings to be held before the Tribunal. In the aforesaid Writ Petition, the workman had laid challenge to the action of the Labour Commissioner in not making reference and this Court having taken note of the explanation rendered on record by the

workman, had only directed the Labour Commissioner to make reference to the Labour Court.

[8] A careful perusal of the specific reference made under Section 10(1) of the Act, which has been taken note herein above, itself reveals that the question with regard to delay and laches was required to be decided by the Tribunal while considering the claim of the workman. It is not in dispute that at no point in time, dispute, if any, was ever raised by the workman qua specific reference made to the Labour Court by the Appropriate Government, rather, the workman by way of filing claim, made an attempt to justify the delay caused in making the reference, as such, there appears to be no force in the argument of Mr. Rahul Mahajan, learned counsel for the workman that the learned Tribunal could not have gone into the question of delay and laches, while ascertaining the claim of the workman. The Apex Court, in Prabhakar v. Sericulture Deptt., 2015 15 SCC 1, while specifically dealing with the question of delay in raising the dispute by the workman under the Act ibid, has held that since there is no period of limitation prescribed under the Industrial Disputes Act, for raising dispute but if such a dispute is raised after a long period, it is to be seen whether such a dispute still exists. In the aforesaid background, Apex Court has held that notwithstanding the fact that the law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti and, for that purpose, he has to demonstrate that even if considerable period has elapsed and there are laches and delays, such delay has not resulted into making such dispute seized to exist. Apex Court has further held that if because of such a delay, dispute no longer remains alive and is to be treated as 'dead', then it would be non-existent dispute, which cannot be referred. In the aforesaid judgment, Apex Court concluded that the words, "at any time", used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to the proceedings under the Act ibid. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed unless there is a satisfactory explanation for the delay. By way of aforesaid judgment, Apex Court ordered that if a Court finds that the dispute still exists though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is open for the Court to either grant reinstatement with back wages or lesser back wages or grant compensation instead of reinstatement. Reliance in this regard is also placed upon following judgments rendered by Apex Court, viz.: Rajasthan State Agriculture Mktg. Board v. Mohan Lal, 2013 14 SCC 543; U.P. SRTC v. Ram Singh, 2008 17 SCC 627; Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd., 2007 9 SCC 109; Asstt. Engineer, CAD v. Dhan Kunwar, 2006 5 SCC 481 and Mahavir v. Union of India, 2018 3 SCC 588. Similar view has been taken by this Court in Girja Nand v. State of Himachal Pradesh & Others, CWP No. 93 of 2019 decided on 13.3.2019; Smt. Sumfali Devi v. State of Himachal Pradesh and another, CWP No. 2861 of 2018 decided on 2.4.2019 and; The Additional Chief Secretary (PW) & Others v. Shri Ram Gopal, LPA No. 27 of 2019 decided on 3.4.2019. The long and short of the matter is very well expressed by the maxim, *vigilantibus non dormientibus jura subveniunt*, that is to say, the law assists those that are vigilant with their rights, and not those that sleep thereupon.

[9] Though, in the case at hand, impugned Award itself reveals that the respondent failed to prove abandonment of job by the workman but the Man Days chart, Exhibit RW1/B clearly reveals that the workman had worked for 18 days in the month of December, 1998, 31 days in the Month of January 1999, 23 days in February, 1999, 27 days in March, 1999, 24 days in April, 1999, 31 days in May, 1999, 24 days in June, 1999, 28 days in July, 1999 and 13 days in August, 1999. Thus, the workman had actually worked for 219 days till the date of his alleged termination. Similarly, the evidence available on record reveals that after the termination of the workman, fresh hands were engaged by the respondent despite the

petitioner being available for the job, but, as has been taken note herein above, workman issued demand notice after around 121/2 years of the alleged retrenchment, by which time, much water had flown under the bridge, as such, learned Tribunal, while keeping in view all relevant factors including the mode and manner of appointment, nature of appointment, length of service, grounds on which termination is set aside and delay in raising the dispute, proceeded to award compensation in lieu of back wages, seniority and past service benefits. Thus, this court sees no reason to interfere with the aforesaid findings, which otherwise appear to be reasonable and justified in the facts and circumstances of the case.

[10] Learned counsel for the workman relies upon a judgment passed by a Coordinate Bench of this Court in Sh. Daulat Ram v. The Executive Engineer, HPPWD, CWP No. 1887 of 2017 and other connected matters, decided on 11th December, 2017, whereby it has been held that the reinstatement cannot be denied merely on the ground of delay. With utmost respect, we find that may be the binding judgments of Supreme Court have not been considered in the above mentioned cases by the Coordinate Bench of this Court. That apart, the judgment is not based upon ratio decidendi of the binding judgments of Supreme Court and is primarily based upon the discretion exercised by the Court. We are thus unable to follow the same, rather, being bound by the dictum of the Supreme Court in the cases referred to supra, we do not find any reason to interfere with the Award passed by learned Tribunal.

[11] The question with regard to competence of the Labour Court to award compensation in such like cases is no more res integra. The Apex Court in Workmen Rastriya Colliery Mazdoor Sangh v. Bharat Coking Coal Ltd., 2016 9 SCC 431 and Rashtriya Colliery Mazdoor Sangh v. Employers, 2017 1 SCC 264, has dealt with the issue at hand and has proceeded to award compensation to the tune of Rs. 4.00 Lakh to each of the workmen in the latter case, as such, argument advanced by Mr. Adarsh Sharma, learned Additional Advocate General that no compensation could have been awarded on account of delay in raising the dispute, deserves outright rejection.

27. In the case in hand, as has been observed above, the petitioner has raised the industrial dispute after a period of 16 years and she has not led any cogent evidence on record to show that she has taken up the matter with the respondent as stated by her and therefore under the facts and circumstances of the case, the petitioner in view of law laid down by Hon'ble High Court abovesaid the case, is not entitled to reinstatement but compensation.

28. Hence taking into consideration the number of working days for which the petitioner worked with the respondent from July, 1991 to November, 1995 and the facts that the respondent has violated the provisions of Section 25-H of the I.D. Act, I am of considered view that it would be in the interest of justice if a sum of Rs.1,50,000/- is awarded as compensation in lieu of reinstatement and other service benefits to the petitioner. Hence issue No.1 is partly decided in favour of the petitioner and issue No. 4 is decided in favour of the respondent and are answered as such.

Issue No. 2

29. In view of returned findings of issue no. 1, the petition is maintainable. Hence this issue is decided against the respondent and is answered in negative.

Issue No. 3

30. Neither any evidence has been led nor any arguments were addressed as to how the petitioner has not come to the court with clean hands and as to what material facts have been

suppressed by the petitioner from the court. Hence the respondent has failed to prove that the petitioner has not come to the court with clean hands and has suppressed the material facts from the court and as such this issue is decided against the respondent and is answered in negative.

Relief

31. In view of my returned findings on issue No.1 above, the claim petition is partly allowed and a sum of Rs.1.50,000/- is awarded as compensation to the petitioner for illegal termination of her services by the respondent. The respondent shall pay the said compensation within period of two months, failing which the respondent shall pay interest @ 12% per annum on compensation amount from the date of the award till realization of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after its due completion be consigned to the Record Room.

Announced in the open Court today, this 12th day of October, 2023

Sd/-
 (NARESH KUMAR),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.,
(Camp at Chamba).

IN THE COURT OF Sh. NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.) (CAMP AT MANDI)

Ref. No. : 69/2018

Date of Institution : 11.7.2018

Date of Decision : 19.10.2023

Ms. Leela Devi w/o Late Shri Dhanir Ram, r/o Village Dumi, P.O. Chhatri, Tehsil Thunag, District Mandi, H.P. Petitioner.

Versus

The Divisional Forest Division Karsog, District Mandi, H.P.

Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Deepak Azad, Ld. Adv.

For the respondent : Smt. Navina Rahi, Ld. Dy. D.A.

AWARD

The appropriate Government has made the following reference under section 10(1) of the Industrial Disputes Act, 1947, for short (hereinafter referred to as 'the I.D. Act') to this court for adjudication:—

"Whether the termination of the services of Ms. Leela Devi w/o Late Shri Dhani Ram Village Dumi, P.O. Chhatri, Tehsil Thunag, Distt. Mandi, H.P. from the year 2013 (as alleged by the Divisional Forest Division Karsog, Distt. Mandi, H.P. without complying with the provisions of the Industrial Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workers is entitled to from the above employer?"

2. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

3. Briefly stated, the case of the petitioner is that she was engaged as daily wager by the Forest Divisional Officer Karsog (respondent) in the month of September, 2001 and was deputed at Forest Nursery Deeng, FRH, Katanda, Mahog under Range Officer Chhatri. She continuously worked with the respondent with fictional breaks and her services were orally terminated by the respondent in the month of December, 2013. She, however, had completed more than 240 days continuous service in each calendar year. The respondent neither served any notice upon her nor paid any compensation to her at the time of termination of her services. Moreover, the respondent has violated the provisions of I.D. Act by giving fictional breaks in her service despite the fact that sufficient work was available with the department. Her services were terminated so as to deprive her the benefit of seniority. The workmen, junior to her, were retained by the respondent department while terminating her services and thus the principle of 'last come first go' has been violated by the respondent. The respondent thus has illegally terminated her service. She requested the respondent to re-engage her, but to no avail. Hence this petition.

4. The petition has been resisted by the respondent by filing reply taking preliminary objections qua maintainability, suppression of material fact and delay and laches. On merits, it has been admitted that the petitioner was engaged as daily wage worker in the year 1999. It has been averred that the petitioner has not completed the service of 240 days in the years 1999, 2000, 2002 to 2005 and 2009, however, it has been admitted that she has completed the service of 240 days in the years, 2001, 2006, 2007, 2008, 2010 to 2012. It has been denied that the petitioner was given fictional breaks in service and her services were illegally terminated. It has been averred that the petitioner has left the work at her own sweet will in the year 2013. The petitioner has not completed continuous service of one year as per provisions of Section 25-F of the I.D. Act. No junior to the petitioner has been regularized by the department and thus the provisions of Sections 25-F, 25-G and 25-H of the Act have not been violated. After denying other allegations, it has been prayed that the claim petition be dismissed.

5. In rejoinder filed by the applicant, the averments made in the petition have been reaffirmed after refuting those of the reply contrary to the averments made in the claim petition.

6. On the pleadings of the parties, following issues were framed on 11.01.2023:—

1. Whether the termination of the services of the petitioner by the respondent during the year, 2013 is/was illegal and unjustified as alleged? ... OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ... OPP.

3. Whether the claim petition is not maintainable, as alleged? · · · *OPR*

4. Whether the petition is bad on account of delay and laches as alleged? · · · *OPR.*

5. Whether the petitioner has not come to the court with clean hands and suppressed the material facts from the court as alleged? · · · *OPR.*

Relief

7. The petitioner was called upon to lead evidence. The petitioner appeared as PW1 and closed evidence. On the other hand the respondent has examined DFO Shri Krishan Bhag Negi, as RW1 and closed the evidence.

8. I have heard the Learned counsel for the petitioner as well as learned Dy. D.A. for the respondent and gone through the case file carefully.

9. For the reasons to be recorded hereinafter, while discussing the aforesaid issues, my findings on the above issues are as under:—

Issue No.1	:	Yes
Issue No.2	:	Reinstatement with all consequential service benefits except back wages.
Issue No.3	:	No
Issue No.4	:	No
Issue No.5	:	No
Relief	:	The petition is partly allowed per operative part of Award.

REASONS FOR FINDINGS

ISSUES No.1 & 2

10. Both these issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

11. It is not in dispute between the parties that the petitioner was engaged as daily wage worker by the respondent in Mahlog Beat, Magroo Range of Karsog Forest Division during the year 1999 and she intermittently worked with the respondent till the year 2013.

12. The petitioner has alleged that she continuously worked with the respondent with fictional breaks till the year 2013 when her services were illegally terminated by the respondent. She, however, had completed more than 240 days continuous service in each calendar year and that the respondent neither served any notice upon her nor paid any compensation to her at the time of termination of her services.

13. On the other hand, the respondent has claimed that the petitioner did not complete service of 240 days in the year 1999, 2002, 2002 to 2005 and 2009 and no fictional breaks were given in her service and she herself had left the work during the year 2013.

14. The respondent has filed the mandays chart Ext. RW1/B of the petitioner on record which is reproduced as under:—

1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
180	192	241	141	166	178	178	244	245	240
2009	2010	2011	2012	2013	2014	2015	2016	2017	
234	244	291	243	0	0	0	0	0	

15. It is evident from the mandays chart Ext. RW1/B that the petitioner had worked with the respondent from 1999 to 2012. As per mandays chart the petitioner had not worked for a single day in the year 2013, however, the petitioner has claimed that she continuously worked with the respondent department till December 2013 with fictional breaks and her services were orally terminated in December 2013 which fact has also been re-affirmed by her in affidavit Ext. PW1/A filed by her in her examination-in-chief and she has not been cross-examined qua her statement to the effect that she worked till the year 2013 and she has denied that she used to remain absent willfully.

16. On the other hand the respondent has also not denied the fact that the petitioner had worked till 2013 rather; Shri Krishan Bhag Negi RW1, in his affidavit Ext.RW1/A, has stated that the services of the petitioner were not terminated and that she intermittently worked with the department upto 2013 and thereafter she did not report for work and the department never gave fictional breaks in her services.

17. Thus, it is evident that Shri Krishan Bhag Negi RW1 has also not denied the fact that the petitioner worked with the respondent till 2013, however, in the mandays chart Ext. RW1/B, she has not been shown to have worked for a single day with the respondent in the year 2013 which means that the mandays chart has also not prepared properly by the respondent.

18. Be that as it may, in view of the statement of Shri Krishan Bhag Negi RW1 that the petitioner worked with the department till 2013, the statement of the petitioner that her services were terminated by the respondent in the year 2013 has to be accepted to be correct.

19. It is not the case of the respondent that the petitioner has not worked continuously for 240 days before her alleged termination; rather the respondent has claimed that the petitioner had not worked continuously for 240 days in the years 1999, 2000, 2002 to 2005 and 2009. It is evident from the mandays chart Ext. RW1/B that the petitioner had worked continuously for 240 days in each calendar year w.e.f. 2006 to 2012 except the year 2009 and thus she was in continuous services as per the provisions of Section 25-B of the I.D.Act when her services were terminated. Since the petitioner was in continuous service under the respondent from the year 2010, her services could have been terminated as per the provisions of Section 25-F of the I.D. Act.

20. The petitioner except for breaks given in her service in the year 1999, 2000, 2002 to 2005 and 2009, continuously worked with the respondent from 1999 to 2013 and she time and again was re-engaged on the same post which in turn goes to show that breaks in her services were given by the respondent with an oblique motive so as to retain her as a temporary worker and deprive her statutory right of permanent worker status.

21. Hon'ble Supreme Court in **Bhuvnesh Kumar Dewedi Vs. Hindalco Industries 2014 LLR 673** has held that as under:

“[23] Very interestingly, the periods of service extends to close to 6 years save the artificial breaks made by the respondent with an oblique motive so as to retain the appellant as a

temporary worker and deprive the appellant of his statutory right of permanent worker status. The aforesaid conduct of the respondent perpetuates 'unfair labour practice' as defined under Section 2(ra) of the I.D. Act, which is not permissible in view of Sections 25T and 25U of the I.D. Act read with entry at Serial No. 10 in the Vth Schedule to the I.D. Act regarding unfair labour practices. Section 2 (ra) reads thus:

"unfair labour practice" means any of the practices mentioned in the Vth Schedule.

Further, Entry 10 of Vth Schedule reads as under:

"5. To discharge or dismiss workmen—

(10). To employ workmen as 'badlis', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen."

[24] The respondent, in order to mitigate its conduct towards the appellant has claimed that the appellant was appointed solely on contract basis, and his service has been terminated in the manner permissible under Section 2 (oo) (bb) of the I.D. Act. However, we shall not accept this contention of the respondent for the following reasons:—

- (i) Firstly, the respondent has not produced any material evidence on record before the Labour Court to prove that it meets all the required criteria under the Contract Labour (Regulation and Abolition) Act, 1970, to be eligible to employ employees on contractual basis which includes license number etc.
- (ii) Secondly, the respondent could not produce any material evidence on record before the Labour Court to show that the appellant was employed for any particular project(s) on the completion of which his service has been terminated through non-renewal of his contract of employment.

[25] Therefore, we deem it fit to construe that the appellant has rendered continuous service for six continuous years (save the artificially imposed break) as provided under Section 25B of the I.D. Act and can therefore be subjected to retrenchment only through the procedure mentioned in the I.D. Act or the state Act in parimateria.

[26] Therefore, we answer the point No. 2 in favour of the appellant holding that the Labour Court was correct in holding that the action of the respondent/employer is a clear case of retrenchment of the appellant, which action requires to comply with the mandatory requirement of the provision of Section 6-N of the U.P. I.D. Act. Undisputedly, the same has not been complied with and therefore, the order of retrenchment has rendered void ab initio in law.

Answer to Point No.3

[27] Having answered point No. 2 in favour of the appellant, we also answer the point No. 3 in his favour since we construe that the appellant is a worker of the respondent Company providing continuous service for 6 years except for the artificial breaks imposed upon him with an oblique motive by the respondent Company. We hold that the termination of service of the appellant amounts to "retrenchment" in the light of the principle laid down by three judge bench decision of this Court in State Bank of India v. Shri N. Sundara Money, 1976 AIR(SC) 1111 and attracts the provision of S. 6-N of the U.P. I.D. Act. The case mentioned

above illustrates the elements which constitute retrenchment. The relevant paragraphs read as under:

"9. A break-down of Section 2(oo) unmistakably expands the semantics of retrenchment. 'Termination...for any reason whatsoever' are the keywords. Whatever the reason, every termination spells retrenchment. So the sole question is has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25F and Section 2(00). Without speculating on possibilities, we may agree that 'retrenchment' is no longer terra incognita but area covered by an expansive definition. It means 'to end, conclude, cease'. In the present case the employment ceased, concluded, ended on the expiration of nine days automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from Section 25F(b) is inferable from the proviso to Section 25F(1). True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract Section 25F and automatic extinguishment of service by effluxion of time cannot be sufficient. An English case R.V. Secretary of State, 1973 2 AIIER 103; was relied on, where Lord Denning, MR observed:

I think the word 'terminate' or 'termination' is by itself ambiguous. It can refer to either of two things-either to termination by notice or termination by effluxion of time. It is often used in that dual sense in landlord and tenant and in master and servant cases. But there are several indications in this paragraph to show that it refers here only to termination by notice.

Buckley L. J, concurred and said:

In my judgment the words are not capable of bearing that meaning. As counsel for the Secretary of State has pointed out, the verb 'terminate' can be used either transitively or intransitively. A contract may be said to terminate when it comes to an end by effluxion of time, or it may be said to be terminated when it is determined at notice or otherwise by some act of one of the parties. Here in my judgment the word 'terminated' is used in this passage in para 190 in the transitive sense, and it postulates some act by somebody which is to bring the appointment to an end, and is not applicable to a case in which the appointment comes to an end merely by effluxion of time. Words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. So screened, we hold that the transitive and intransitive senses are covered in the current context. Moreover, an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a composite order one giving employment and the other ending or limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A preemptive provision to terminate is struck by the same vice as the post-appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision."

[28] Section 6N of the U.P. I.D. Act which is in parimateria to s. 25N of the I.D. Act reads thus:

"[6-N. Condition precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of the notice;

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies the date of termination of service;

- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the State Government]"

Evidently, the above said mandatory procedure has not been followed in the present case. Further, it has been held by this Court in the case of Anoop Sharma v. Executive Engineer, Public Health Division No. 1 Panipat, 2010 5 SCC 497 as under:

"13 .. no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in clauses (a) and (b) of Section 25F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. This Court has repeatedly held that Section 25F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity - State of Bombay v. Hospital Mazdoor Sabha, 1960 AIR(SC) 610, Bombay Union of Journalists v. State of Bombay, 1964 6 SCR 22, State Bank of India v. N. Sundara Money, 1976 1 SCC 822, Santosh Gupta v. State Bank of Patiala, 1980 3 SCC 340, Mohan Lal v. Management of M/s. Bharat Electronics Ltd., 1981 3 SCC 225, L. Robert D Souza v. Executive Engineer, Southern Railway, 1982 1 SCC 645, Surendra Kumar Verma v. Industrial Tribunal, 1980 4 SCC 443, Gammon India Ltd. v. Niranjan Das, 1984 1 SCC 509, Gurmail Singh v. State of Punjab, 1991 1 SCC 189 and Pramod Jha v. State of Bihar, 2003 4 SCC 619. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/ engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.

Therefore, in the light of the law provided in the I.D. Act and its state counterpart through the U.P. I.D. Act and also on the basis of the legal principle laid down by this Court, we hold that the termination of service of the appellant was illegal and void ab initio.

[29] Therefore, the Labour Court was correct on factual evidence on record and legal principles laid down by this Court in catena of cases in holding that the appellant is entitled to reinstatement with all consequential benefits. Therefore, we set aside the Order of the High Court and uphold the order of the Labour Court by holding that the appellant is entitled to reinstatement in the respondent-Company”.

22. Thus, in view of law laid down by the Hon’ble Supreme Court in the above said case, engagement and re-engagement of petitioner as daily wage worker after giving breaks in her service in the year 1999, 2000, 2002 to 2005 and 2009, amounts to ‘unfair labour practice’ which is not permissible under law and petitioner shall be deemed to be in continuous service since 1999.

23. The respondent has taken the plea of abandonment of work by the petitioner. Hon’ble High Court in **C WP No. 3634 of 2009** titled as **Narain Singh vs. The State of Himachal Pradesh & Ors.** decided on 21.6.2016, has held that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Hon’ble High Court in **State of H.P. and Anr. vs. Partap Singh, 2016(6) ILR (HP) 1314** has held that it is settled that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer and even if it is presumed that the workman had abandoned the job himself and the same is a gross misconduct, in that case some disciplinary inquiry should have been initiated against the workman and the employer has to prove the same by leading evidence.

24. Therefore, in view of the law laid down in above said case, the respondent was required to prove that the petitioner had left/abandoned the work, but the respondent has not led any cogent evidence on record to prove the same.

25. Shri Krishan Bhag Negi (RW1) has stated that the petitioner worked intermittently with the respondent department upto 2013 thereafter, she did not report for the work and she had left the work at her own sweet will and she never approached the department to re-engage her as daily wage worker in writing or personally till date and that she was never disengaged or terminated by the respondent department. In his cross-examination he has admitted that the petitioner has left the work in the year 2013 and therefore no notice was issued to her. The department did not call the petitioner by issuing any notice. He has denied that the petitioner had not left the job. He, however, has further stated that no compensation was paid to the petitioner.

26. Thus, it is evident that except the bald statement of Shri Krishan Bhag Negi, RW1, the respondent has not led any evidence on record to prove the plea of abandonment of work by the petitioner. There is also nothing in the evidence that the petitioner from which could be inferred that she had abandoned the work; rather she in her affidavit Ext. PW1/A has stated that her services were terminated orally by the respondent/department in the month of December, 2013 and neither any notice was issued to her nor compensation was paid to her despite the fact that the work was available with the department at the relevant time. She has been cross-examined lengthy but she has denied that she herself had abandoned the work. Hence, the respondent has failed to prove on record that the petitioner has abandoned the work, therefore, the evidence of the petitioner that her services were terminated by the respondent has to be accepted to be correct.

27. Since the petitioner was in continuous service with the respondent before termination of her services during year 2013, the respondent was required serve one month notice upon the petitioner before terminating her service or to pay one month’s wages in lieu of the period of notice and also to pay retrenchment compensation to her but the respondent has neither served any notice upon the petitioner nor paid one month wages nor any retrenchment compensation to the petitioner, therefore, it can safely be held that the respondent has illegally terminated the services of the petitioner in contravention of the provisions of Section 25-F of the I.D. Act.

28. The petitioner (PW1) has also stated that the junior to her were retained by the respondent while terminating her services and therefore violated the principle of 'last come first go' and the services of her juniors have been regularized. Shri Krishan Bhag Negi (RW1) in his cross-examination has denied that the juniors to the petitioner were retained when the services of the petitioner were terminated and he has also denied that Sheela Devi, Tara Chand and Budhi Devi were still working in the department and added that he has to verify the same from the record.

29. The petitioner has placed the office order dated 10.4.2013 Ext. PW1/C issued by the respondent qua granting the status of full time daily wage worker to the part time workers on record, perusal of which would show that Tara Chand and Sheela Devi mentioned at serial Nos. 9 and 10 were engaged on 1.5.1999 and 1.3.2001 after the engagement of the petitioner as daily wage worker and they have been given status of full time daily wage worker w.e.f. 29.6.2012 and thus it is established on record that the respondent had retained juniors to the petitioner in service while terminating her services and thereby violated the principle of 'last come first go' and contravened the provisions of Section 25-G of the I.D. Act.

30. Thus the petitioner has been able to prove on the record that the respondent has illegally terminated her services and also breached the principle of "last come first go". Hon'ble Supreme Court in **Bharat Sanchar Nigam Ltd. vs. Bhuramal 2014 7 SCC 177** has held that where the termination of daily wage worker is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice except where termination of a daily wage worker is found to be illegal on the ground it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained.

31. In the case in hand, the respondent has terminated the services of the petitioner by resorting to the unfair labour practice as well as in violation of principle of "last come first go", therefore, she is entitled to reinstatement with consequential service benefits including seniority from the date of her initial engagement except back wages as the petitioner has not led any evidence on record to prove that she was not gainfully employed anywhere after termination of her services. Hence both these issues are decided in favour of the petitioner and are answered as such.

Issue No. 3

32. In view of my findings on the issues No.1 and 2, the petition is maintainable. Hence this issue is decided against the respondents and is answered in negative.

Issue No. 4

33. Hon'ble Supreme Court in **Prabhakar Vs. Joint Director Sericulture Department and others 2015 (15) SCC 1** has held that no period of limitation is prescribed under 'the I.D. Act' for making reference under Section 10(1) of 'the I.D. Act' but if the dispute is raised after a long period, it is to be seen whether such a dispute still exists and if the court finds that the dispute exists, it is open for the court to take the aspect of delay into consideration and mould the relief and grant reinstatement without back wages or lesser back wages or compensation instead of reinstatement.

34. In the case in hand, in view of my findings on issue No.1 the dispute between the parties still exists and the claim of the petitioner was not very stale when she raised industrial

dispute and therefore, in view of the law and order of Hon'ble Supreme Court in the above said case, petition is not bad on account of delay and laches. Hence this issue is decided against the respondent and is answered in negative.

Issue No. 5

35. Neither any evidence has been led nor any arguments were addressed as to how the petitioner has not come to the court with clean hands and as to which material facts have been suppressed by her from the court. Hence it is held that the respondent has failed to prove the same and as such this issue is decided against the respondent and is answered in negative.

Relief

36. In view of my findings returned on issues No.1 and 2 above, the claim petition is partly allowed. The breaks given in the service of the petitioner in the years 1999, 2000, 2002 to 2005 and 2009 are held illegal and unjustified and the petitioner shall be deemed to be in continuous service from the year 1999 and the respondent is directed to reinstate the petitioner forthwith with all consequential service benefits including seniority from the date of her initial engagement except back wages. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

37. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 19th day of October, 2023

Sd/-

(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.,
(Camp at Chamba).

IN THE COURT OF Sh. NARESH KUMAR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	:	49/2019
Date of Institution	:	23.5.2019
Date of Decision	:	31.10.2023

Smt. Krishna Devi w/o Late Shri Trilok Chand, r/o Village Tharu, P.O. Ahju, Tehsil Joginder Nagar, District Mandi, H.P. *Petitioner.*

Versus

The Additional Superintendent Engineer, Electrical Division, HPSEB Limited, Joginder Nagar, District Mandi, H.P. *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner	:	Sh. Vijay Kaunal, Ld. Adv.
		Sh. Rajat Chaudhary, Ld. Adv.
For the respondent	:	Sh. Anand Sharma, Ld. Adv.

AWARD

The appropriate Government has made the following reference under section 10(1) of the Industrial Disputes Act, 1947 (hereinafter in short is referred to as 'the I.D. Act') to this court for adjudication:—

"Whether the verbal termination of services of Smt. Krishan Devi w/o Late Shri Trilok Chand, r/o Village Tharu, P.O. Ahju, Tehsil Joginder Nagar, District Mandi, H.P. by the Addl. Superintendent Engineer, Electrical Division HPSEB Ltd., Joginder Nagar, District Mandi, H.P. w.e.f. 01.03.2017 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved worker is entitled to from the above employer?"

2. After receipt of above said reference, a corrigendum dated 9th July, 2021 has been received from the appropriate Government which reads as under:

"Whereas, a reference has been made to the Ld. Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, District Kangra, H.P. vide this office notification of even no. dated 04-05-2019 for legal adjudication. However, inadvertently the correct facts could not be mentioned about the date of termination of the services of workman in the said notification. Therefore, the date of the termination of the services of workman may be read as "01-03-2018" instead of "01-03-2017" as alleged by workman".

3. Notices to the parties were issued. The parties put in appearance before the court and the petitioner has filed statement of claim.

4. Briefly stated, the case of the petitioner is that she was verbally engaged by the respondent as part-time safai karamchari in the month of June 2004 and she continuously worked under Assistant Engineer HPSEB Limited, Chauntra 33 KV Sub-Station, Sukka Bagh for two hours daily upto 28.2.2018. The State Government has framed the policy to convert services of part-time worker to daily wage workers from time to time and all the departments including the respondent has converted the services of part-time workers to daily wage workers, however, her services were not converted by the respondent. She made representation to the respondent on 1.2.2018 to convert her services from part-time worker to daily wage worker as per policy of the State Government. The Assistant Engineer Electrical Sub-Division HPSEB Ltd. Chauntra vide letter No. 814-15 dated 27.2.2018 submitted point-wise reply to Additional Superintending Engineer, Electrical Division, HPSEBL Joginder Nagar wherein the Assistant Engineer has wrongly written that the petitioner used to come to his office for cleaning and gardening work occasionally as per her convenience mostly for 10 to 12 days in a month that too for 10 to 15 minutes as she worked on part time basis. The Assistant Engineer instead of converting her services from part-time to daily wage worker verbally terminated her services w.e.f. 01.3.2018 as per the directions of the respondent without complying with the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act. No notice was served upon her nor wages in lieu of notice period were paid to her and thus the respondent has illegally terminated her services. The act of the respondent was highly unjustified, arbitrary and unconstitutional. It has thus been prayed that her illegal termination w.e.f. 1.3.2018 be set aside and

the respondent be directed to reinstate her with full back wages, seniority and other consequential benefits. Hence this petition.

5. The petition has resisted by the respondent by filing of reply taking preliminary objections qua cause of action, suppression of material facts, limitation and maintainability. On merits, it has been admitted that the petitioner was verbally engaged, however, it has been denied that she continuously worked in the office of Assistant Engineer, HPSEB Sub-Division Chauntra upto 28.8.2018. It has been averred that the petitioner was engaged on part-time basis for cleaning and gardening work occasionally as per requirement for maximum period of 10 to 12 days in a month that too for 10 to 15 minutes per day. She was not employee of the department nor she was engaged on daily wage basis. It has been averred that the petitioner has been working in Government Primary school Ahju as Mid Day Meal helper w.e.f. 20.5.2014 till date and is gainfully employed in the aforesaid primary school and therefore the claim of the petitioner that she worked upto 28.2.2018 is wrong and incorrect. The petitioner left the services on her own sweet will without any notice to the department. She has not completed 240 days services in any calendar year and her services were never terminated; rather she abandoned the work and thus no provisions of the I.D. Act have been contravened. The services of the persons, who continuously worked with the Board, were regularized by the Board as per the regularization policy of the Board. The petitioner has filed claim on baseless ground for getting permanent employment on the basis of the Government policy which is not attracted in the factual matrix of the case. After denying other allegations, it has been prayed that the petition be dismissed.

6. In rejoinder filed by the petitioner, the averments made in the petition have been reaffirmed after refuting those of the reply contrary to the averments made in the claim petition.

7. On the pleadings of the parties, following issues were framed on 30.11.2021:—

1. Whether termination of services of the petitioner by the respondent w.e.f. 01-03-2018 was/is illegal and unjustified, as alleged? ... OPP.
2. If issue no.1 is proved in affirmative, to what amount of back wages, seniority, past service benefits and compensation, the petitioner is entitled to from the employer/respondent? ... OPP.
3. Whether petitioner has no locus standi and cause of action to file the present claim? ... OPR.
4. Whether the petitioner has not come to the Court with clean hands and suppressed the material facts. If so, its effect? ... OPR.
5. Whether the claim of petitioner is time barred? ... OPR.

Relief.

8. The petitioner was called upon to lead evidence. The petitioner appeared as PW1 and closed the evidence.

9. On the other hand the respondent has examined Engineer Gaurav Sharma as RW1 and closed the evidence.

10. I have heard the Learned Counsel for the parties and gone through the case file carefully.

11. For the reasons to be recorded hereinafter, the findings on the above issues are as under:—

Issue No. 1	:	No
Issue No. 2	:	No
Issue No. 3	:	Yes
Issue No. 4	:	Yes
Issue No. 5	:	Redundant
Relief	:	Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 4

12. All these issues being inter linked and inter-connected are taken up together for disposal in order to avoid prolixity of evidence.

13. It is not in dispute between the parties that the petitioner was engaged by the respondent as part-time safai karamchari in the month of June 2004 and she worked under Assistant Engineer, HPSEBL Sub-Division Chauntra. The petitioner has claimed that she continuously worked for two hours under Assistant Engineer, HPSEBL, Chauntra Sub-Division upto 28.2.2018 and her services were terminated by the respondent without serving any notice upon her or paying wages in lieu of notice period or retrenchment compensation to her.

14. On the other hand, the respondent has denied that the petitioner worked under Assistant Engineer, HPSEBL Chauntra Sub-Division upto 28.2.2018 for two hours daily. The respondent has claimed that the petitioner was engaged as part-time basis for cleaning and gardening work as per requirement for maximum period of 10-12 days in a month that too for 10 to 15 minutes daily and her services were not terminated; rather she left the job on her own and she has been working as Mid day Meal helper in Government primary school Ahju, w.e.f. 24.5.2014 till date.

15. The petitioner Krishna Devi has appeared as PW1 and has filed affidavit Ext. PW1/A, in her examination-in-chief wherein she affirmed the averments made in the petition on oath. In her cross-examination she has denied that she used to work for 10 to 12 day in a month that too for 10-15 minutes per day daily. She has denied that she herself had left the work, however, she categorically has admitted that she had been working as Mid day Meal helper in GPS Ahju since the year 2014 and she is also doing cleaning work in a private school at Ahju. She has also admitted that she had never worked for whole day. She has denied that she herself left the job and added that her services were terminated.

16. On the other hand, the respondent has examined Engineer Gaurav Sharma as RW1. He has stated that he is posted as Senior Executive Engineer, Electrical Division, HPSEBL Joginder Nagar since March 2022 and is conversant with the facts of the case. The petitioner used to report for duty only for 10 to 15 days in a month that too for 10 to 15 minutes. She has been working as Mid Day Meal worker since 20.5.2014 as per letter received from the BEEO Chauntra. Petitioner

herself has absented from the work and her services were never terminated by the respondent. The petitioner never worked for whole day. In his cross-examination he has stated that no appointment letter was issued to the petitioner. The petitioner used to clean bath room during the period of 15 minutes as and when she used to come to the office. The petitioner was paid through hand receipt. The petitioner abandoned the work in the year 2014. Their office was shifted after the year 2014 and no person was engaged by them for cleaning toilet. The office was shifted to building of 33 KV Sub-station in Chauntra Bazar. He has admitted that he has not produced any letter written by their office to BEEO Chauntra for supplying information regarding working of the petitioner as Mid Day Meal Worker. He has denied that petitioner had worked for 240 days every year and her services were illegally terminated in the year 2018. No notice was issued to the petitioner when she left the work.

17. Thus it is evident from the resume of the evidence of both the parties discussed above supra that the petitioner Krishna Devi herself has dismantled her case by admitting that she has been working as Mid Day Meal helper in Government Primary School Ahju since the year 2014. The evidence of Gaurav Sharma, Senior Executive Engineer (RW1) and the copy of letter Ext. RW1/A produced on record by the respondent has been challenged on the ground that the letter written by the respondent to BEEO Chauntra for supplying information under RTI Act has not been produced on record, however, the original of the letter Ext. RW1/A was produced at the time of examination of Gaurav Sharma RW1 and the petitioner herself has admitted that she is working as Mid Day Meal helper in Government Primary School Ahju since 2014 and therefore information supplied vide letter Ext. RW1/B that the petitioner has been working as Mid Day Meal helper w.e.f. May 2014 till date in Government Primary School Ahju, Chauntra can safely be read in evidence. As per information supplied vide letter Ext. RW1/A by Central Head Teacher Government Primary School Ahju, the petitioner is working as Mid Day Meal helper in Government Primary School Ahju since 20.05.2014.

18. Thus, in view of admission of the petitioner PW1 coupled with the information supplied vide letter Ext. RW1/A, it is established on record that the petitioner is working as Mid Day Meal helper in Government Primary School Ahju, Chauntra w.e.f. 20.5.2014 which belies the claim of the petitioner that she worked with the respondent till 28.2.2018 and therefore claim/statement of petitioner that she worked with the respondent till 28.2.2018 and the respondent has terminated her services cannot be accepted.

19. This apart, the petitioner herself has admitted that she, besides working as Mid Day Meal Worker, is also doing cleaning work in private school at Ahju and she never worked under the respondent for whole day. The petitioner has not produced any documents on record to prove that she worked for 240 days under the respondent during period of 12 months preceding the date of her alleged termination or even prior to 20.5.2014. The petitioner has neither required the respondent to produce such record nor got the record of the respondent summoned to prove that she continuously worked under the respondent till 28.02.2018. She has not pleaded that the respondent had given breaks in her service intentionally; rather she has claimed that she continuously worked under the Assistant Engineer, HPSEBL Chauntra Sub-division till 28.2.2018. However, the claim of the petitioner, in view of my above observations, is false and therefore, in such set of circumstances, the statement of Gaurav Sharma RW1 that petitioner used to work for 10 to 15 days in a month that too for 10 to 15 minutes and her services were never terminated and she herself had abandoned the work has to be accepted to be correct.

20. Consequently it can safely be held that the petitioner herself had abandoned the work and she has not come to the court with clean hands; rather she has suppressed the material fact from the court that she herself has joined the services as Mid Day Meal helper in Government Primary School Ahju on 20.5.2014 and thus the petitioner has no cause of action and locus standi to file the

petition and she is not entitled to any relief as claimed by her. Hence issues No.1 and 2 are decided against the petitioner and the issues No.3 and 4 are also decided in favour of the respondent and are answered as such.

Issue No.5

21. Hon'ble Supreme Court in **Prabhakar Vs. Joint Director Sericulture Department and others 2015 (15) SCC 1** has held that no period of limitation is prescribed under 'the I.D. Act' for making reference under Section 10(1) of 'the I.D. Act' but if the dispute is raised after a long period, it is to be seen whether such a dispute still exists and if the court finds that the dispute exists, it is open for the court to take the aspect of delay into consideration and mould the relief and grant reinstatement without back wages or lesser back wages or compensation instead of reinstatement.

22. In the case in hand, in view of my findings returned on issues No.1 and 2, the petitioner has suppressed the material fact from the court that she has joined services as Mid Day Meal helper in Government Primary School Ahju on 20.5.2014 and since then she is working in the said school and thus no dispute between the parties exists and therefore this issue has become redundant and is answered accordingly.

Relief

23. In view of my findings returned on the above issues, the present claim petition fails and is accordingly dismissed. However, under the facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of October, 2023

Sd/-
(NARESH KUMAR),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.,
(Camp at Chamba).

ब अदालत कार्यकारी दण्डाधिकारी सुन्दरनगर, जिला मण्डी (हि० प्र०)

श्री जगदीश पुत्र जय राम, निवासी डिनक रडा, डाकघर कनैड, तहसील सुन्दरनगर, जिला मण्डी (हि० प्र०) प्रार्थी।

बनाम

आम जनता

प्रत्यार्थीगण।

प्रार्थना—पत्र नगर ग्राम पंचायत डुगराई, तहसील सुन्दरनगर में जन्म तिथि दर्ज करने वारे।

श्री जगदीश पुत्र जय राम, निवासी डिनक रडा, डाकघर कनैड, तहसील सुन्दरनगर, जिला मण्डी (हिं0 प्र0) ने इस न्यायालय में आवेदन—पत्र मय शपथ—पत्र, District Registrar (Birth & Death) - cum-Chief Medical Officer, Mandi द्वारा दिया गया पत्र व अनापत्ति प्रमाण—पत्र प्रस्तुत किया है कि उसका जन्म दिनांक 26-01-1987 को गांव डिनक रडा, तहसील सुन्दरनगर में हुआ है, परन्तु ग्राम पंचायत डुगराई, तहसील सुन्दरनगर में दर्ज नहीं है। प्रार्थी अपनी जन्म तिथि ग्राम पंचायत डुगराई, तहसील सुन्दरनगर में दर्ज करवाना चाहता है।

अतः इस इश्तहार के माध्यम से आम जनता को सूचित किया जाता है कि उक्त जन्म—तिथि दर्ज करने बारा किसी भी प्रकार का कोई उजर/ एतराज हो तो वह दिनांक 30-03-2024 को मुकर्र तारीख पर बवक्त 10.00 बजे सुबह असालतन या वकालतन हाजिर आकर पैरवी मुकदमा करें अन्यथा आपके खिलाफ कार्यवाही एकतरफा अमल में लाई जायेगी।

आज दिनांक 05-03-2024 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
सुन्दरनगर, जिला मण्डी (हिं0 प्र0)।

CHANGE OF NAME

I, Surendra Kumar s/o Roshan Lal, resident of Village Telga, Post Office Khashadhar, Tehsil Chirgaon, District Shimla (H.P.) declare that the name of my son Rehan is registered as Rehab Banata in his Aadhar. Which is wrong. Therefore it should be changed to Rehan.

SURENDRA KUMAR
s/o Roshan Lal,
r/o Village Telga, Post Office Khashadhar,
Tehsil Chirgaon, District Shimla (H.P.).

नाम परिवर्तन

मैं, वंदना कुमारी पत्नी श्री शिव कुमार ओहरी, निवासी वार्ड नं0 5, मोहल्ला पुलवाला बाजार ऊना, तहसील व जिला ऊना (हिं0प्र0) घोषणा करती हूं कि मेरी बेटी अंशिका कुमारी के दसवीं कक्षा के स्कूल प्रमाण—पत्र में मेरा नाम वंदना ओहरी गलत दर्ज है। जबकि मेरा सही नाम वंदना कुमारी है। कृपया इसे ठीक करें।

वंदना कुमारी
पत्नी श्री शिव कुमार ओहरी,
निवासी वार्ड नं0 5,
मोहल्ला पुलवाला बाजार, ऊना,
तहसील व जिला ऊना (हिं0प्र0)।

नाम परिवर्तन

मैं, पुजा पत्नी केशव राम, गांव मिणी, डाकघर गवास, तहसील चिडगांव, जिला शिमला (हिमाचल प्रदेश) में रहती हूं कि मैंने अपना नाम पुजा से बदलकर बबली रख दिया है। इसलिए सभी दस्तावेजों में मेरा नाम बबली किया जाए।

पुजा
पत्नी केशव राम,
गांव मिणी, डाकघर गवास,
तहसील चिडगांव, जिला शिमला (हिमाचल प्रदेश)।

